In the Supreme Court of the United States

OCTOBER TERM 1933

No. 920

STATE OF TEXAS ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

SUPPLEMENTAL BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

The brief for the appellants was not filed in this Court until Friday, May 4, by which time the brief for the United States and the Interstate Commerce Commission had already gone to the printers. With the consent of the Court the Government now files this supplemental brief for the purpose of making reply to such arguments of the appellants as have not been anticipated in its main brief.

Appellants in their brief, addressing themselves to the "single and sole contention * * * that

the Interstate Commerce Commission was without power or authority to authorize the applicant railroad company to remove the general office of the Texarkana and Fort Smith Company from the confines of the State of Texas * * *" (Appellants' brief, p. 6), make three arguments, as follows:

I. They contend that the provisions of Sec. 5 (15) of the Interstate Commerce Act, as amended by the Emergency Railroad Transportation Act, 1933 (relative to exemption of carriers from the operation of "all other restraints or prohibitions by or imposed under authority of law, State or Federal * * *") were not intended to sanction an order of the Commission permitting the removal of the general offices and shops of the Texarkana and Fort Smith Railway Company from the State of Texas, contrary to the laws of Texas invoked herein, because:

(1) They claim the requirement of the State statutes is "not a restraint and neither is it a prohibition" (Appellants' brief, p. 21). This is obviously unsound, for the reason that the laws of the State of Texas *require* the maintenance of the general offices and the residence of general officers within the State (Articles 6275 and 6278), and provide for a penalty of $5,000 for each violation of these provisions (Article 6476). The operation of these State laws is just as much a "restraint" or "prohibition" upon corporations desiring to do a

railroad business in Texas as are any other types of statutes.

(2) They contend further that the "restraints or prohibitions" referred to in paragraph 15 are to be confined in their meaning to restraints or prohibitions of an antitrust character only (Appellants' brief, p. 21). This point has been discussed fully on pages 32 to 36, inclusive, of the Government's brief and in the opinion of the court below (R. 55–58).

(3) Finally, appellants argue that Sec. 11 of the Emergency Railroad Transportation Act, 1933, providing that the carrier shall not be relieved from "any contractual obligations which it may have assumed, prior to the enactment of this act with regard to the location, or maintenance of offices, shops, or roundhouses at any point", specifically forbids an order of the Commission to permit the removal of the general offices and shops in Texas in this case because the State statutes invoked herein are to be read into the terms of the charter of the Texarkana and Fort Smith Railroad Company and such charter, including such statutes, is a "contractual obligation" within the meaning of Sec. 11.

The reply of the Government to this contention is twofold:

(*a*) Sec. 11 of the Emergency Railroad Transportation Act, 1933, referred to, relates only to Title I of that Act and has no reference to the pro-

visions of Title II, with which this case is concerned.

(*b*) The legislative history of Sec. 11 clearly reveals that the section was intended to relate to actual contracts between carriers and municipalities whereby, in consideration for the grant of lands or money for facilitating the construction of the railroad, the carrier had agreed, at the time of its incorporation, to maintain its offices, shops, or roundhouses within the limits of such municipalities. In the discussion on the floor of the Senate relative to the purpose of the insertion of Sec. 11 into the Act as an amendment, Senator Connally of Texas, author of the amendment, stated:

> Let me say to the Senator that in my State there have been one or two cases in which the railroad company contracted, when it was being built, to locate and maintain in perpetuity shops and offices in consideration of the grant of lands or money or other considerations. Attempts have been made by the companies to move those shops and abrogate those contracts. Those cases have gone to the Supreme Court of the United States and the cities have been successful in their contention. From time to time they renew their attempts through the Interstate Commerce Commission to secure the abrogation of those contracts.

See 77 Congressional Record, p. 4439. One of the decisions of this Court referred to by Senator Connally is *International and Great Northern*

Railway Company v. *Anderson County et al.*, 246 U.S. 424, relied upon by appellants herein and which will be discussed below. Clearly, therefore, Sec. 11 was never intended by Congress to authorize the maintenance of offices, shops, and roundhouses in a State in the absence of some such actual and formal contract between carriers and municipalities as above described.

II. Secondly, appellants contend that the Texas statutes invoked herein are within the exercise of the police power of the State; hence "an intention to override (them) is not to be imputed by Congress, unless its enactment compels that conclusion" (pp. 19, 20). It has been shown by the Government that the Federal statutes (that is to say, Sec. 5 (4) (a) and (b), conferring power upon the Commission to enter the order, and Sec. 5 (15), striking down the State statutes) under which the order in question was issued are clear, unambiguous, and broad.

III. Finally, appellants contend that this Court has held in the case of *International and Great Northern Railway Company* v. *Anderson County et al.*, 246 U.S. 424, that the State statutes were within the valid exercise of police power and did not constitute a direct burden on interstate commerce. In that case, suit was brought by the citizens of Anderson County, Texas, and of the City of Palestine, Texas, in a district court of that State to enjoin the defendant International and Great Northern

Railway Company from moving certain offices and shops from Palestine. The shops had been located at that place pursuant to a contract entered into on March 15, 1872, by the Houston and Great Northern Railroad Company, a remote predecessor of the International and Great Northern Railway Company, with the citizens of Palestine and Anderson County, whereby, in consideration of the issuance of bonds by the county, the railroad company agreed to maintain its general offices, machine shops, and roundhouses at Palestine. The terms of this contract were carried out by the parties thereto and by the International and Great Northern Railroad Company, an immediate successor of the Houston and Great Northern. Meanwhile, in 1889, there were enacted the State laws which are also involved in the case now at bar, known as the Office-Shops Act, requiring, *inter alia*, all railroad corporations of the State to maintain their shops and offices therein. In 1910 the International and Great Northern Railroad Company went into the hands of a receiver appointed by the Circuit Court of Appeals of the United States, by virtue of default upon certain of its mortgages, and its properties were sold to the defendant, International and Great Northern Railway Company. This corporation, as purchaser, filed in the Circuit Court a repudiation of any agreement on the part of its predecessors to maintain the offices and shops at Palestine.

The State court, pursuant to the verdict of a jury, found that the maintenance of the shops at Palestine cast no burden upon interstate commerce and determined that the State statutes requiring such maintenance were not unconstitutional. The bill of injunction was granted, was affirmed by the Court of Civil Appeals of Texas (174 S.W. 305), writ of error to the Supreme Court of Texas was denied, and the case brought before this Court on the ground, among others, that the State statutes were unconstitutional because the maintenance of the shops constituted a burden upon interstate commerce. In affirming the judgment of the court below this Court said (p. 433):

> The jury found that it imposed no such burden, upon an issue submitted to them in accordance with the desire of the plaintiff in error, although not in the form that it desired. So far as the question depended upon the testimony adduced the verdict must be accepted, and although no doubt there might be cases in which this Court would pronounce for itself, irrespective of testimony, whether a burden was imposed, we are not prepared to say that in this instance the state has transcended its powers. The burden if any is indirect.

The Government's position, with reference to that case, is that it is altogether distinguishable. In the first place the Anderson County case originated and was decided some years before the en-

actment of the Transportation Act of 1920. During the entire life of the litigation, there was no provision of Federal law permitting the acquisition or control of one carrier by another, by lease or stock ownership, when found to be in the public interest. The entire background of that case has now been changed by virtue of the new perspective of transportation recognized by the Transportation Act of 1920 and the decisions of this Court (such as are indicated in the Government's main brief), sustaining this view.

The case at hand differs from the Anderson County case, furthermore, in that here the Commission, acting under authority conferred upon it not only by the Transportation Act of 1920 but also by the Emergency Railroad Transportation Act, 1933, has found, upon adequate testimony, that the maintenance of the offices and shops at Texarkana involves an unnecessary expenditure and constitutes an undue burden on interstate commerce. The testimony before the Commission was not disputed by the appellants before that tribunal or in the court below (R. 53). Appellants have not brought into the record in this case any of the testimony upon which such findings were based. Under these circumstances, this Court, within the past two weeks, and following frequently expressed rulings, has held that the findings of the Commission are conclusive. In *Mississippi Valley Barge Line Company* v. *United States et al.*, No. 807, October Term, 1933, decided April 30, 1934, it was said:

None of the evidence received by the Commission was placed before the court.

The settled rule is that the findings of the Commission may not be assailed upon appeal in the absence of the evidence upon which they were made. *Spiller* v. *A. T. and S. F. R. Company*, 253 U.S. 117, 125; *Louisiana and Pine Bluff R. Company* v. *United States*, 257 U.S. 114, 116; *Nashville C. and St. L. R. Company* v. *Tennessee*, 262 U.S. 318, 324; *Edward Hines Trustees* v. *United States*, 263 U.S. 143, 148; *C. I. and L. R. Company* v. *United States*, 270 U.S. 287, 295.

At the argument in this cause, Mr. Justice Brandeis asked whether, if the general offices and shops were removed from the State of Texas, there would be any way in which service upon the Texarkana Company could be made *in Texas*. The interrogation took two forms, as follows:

I. If the general offices and shops are removed, how could service be made in the State upon the domestic railroad corporation (the Texarkana Company) organized and operating in the State of Texas?

To this question there are two answers: (1) The general law of Texas providing for service upon domestic corporations provides:

> Art. 2029 (1860) (1222) (1223) *Against Corporations and joint stock associations.*—In suits against any incorporated company or joint stock association, the citation may

be served on the president, secretary, or treasurer of such company or association, or upon the local agent of such company or association in the county where suit is brought, or by leaving a copy of the same at the principal office of the company during office hours. If neither the president, secretary, or treasurer reside in the county in which suit is brought, and such company or association has no agent in the county, then the citation may be served upon any agent representing such company or association in the State. (1903, p. 66; Acts 1874, p. 31, p. 108; G.L. Vol. 8, pp. 34, 110; Acts 1854, p. 53; G.L. Vol. 3, p. 1497; P.D. 1430, 4888; Acts 1887, p 119; G.L. Vol. 9, p. 917.)

The lease as approved by the Interstate Commerce Commission permits the removal only of the operating offices and not of the "public" offices of the domestic corporation (the Texarkana Company). The lease provides that "the Southern Company (the lessee) does not assume any obligation to maintain, during the term of this lease, any general offices, machine shops, or roundhouses * * *" (R. 11). But, in addition to the customary "general offices" of railroads, Section 3 of Article 10 of the Texas Constitution provides that railroad corporations must "maintain a public office or place in (the) state for the transaction of its business, where transfers of stock shall be made, and where shall be kept, for inspection by the stockholders of such corporations, books", etc. This constitutional provision was adopted in 1875.

The following year, by statute, it was provided that "every railroad shall have and maintain a public office at some place upon the line of its road in this state." Art. 4115, c. 3, Tit. lxxxix, Texas Revised Statutes, 1879. In 1885 this provision was reenacted, in the form in which it appears today as the law of Texas, and a railroad was still required to "maintain a public office in the locality where its principal business is carried on in this state. * * *" C. 68, Laws of Texas, 1885; Art. 6281, Tit. 112, Revised Civil Statutes of Texas, 1925. Independent of these statutes is the "Office-Shops Act", involved herein, which became the law of Texas in 1889. C. 106, Laws of Texas, 1889; Art. 6275, Tit. 112, Revised Civil Statutes of Texas, 1925. The order of the Commission and the lease apply to the "general offices" and not to the "public office" of this domestic corporation. The person in charge of the "public" office of the Texarkana could be served under Art. 2029, quoted above, as an agent.

(2). In our search, we find no provision of Texas law for modes of substituted service. If there is no such agent for the service of process, then the statutes of Texas are simply deficient in this respect and further legislation could remedy the matter. In any event, the fact that the state of Texas does not appear to have provided for such service upon domestic corporations cannot affect the power of the Interstate Commerce Commission under the Federal statutes.

II. The second question asked counsel for the Government was whether, if the corporation went out of existence and discontinued its operations in the State, there is any way in which service could be had.

In answer to this question, it may be noted that: (1) If the railroad can discontinue operations in the State of Texas, the result would be no different whether it had previously maintained general offices and shops there or not, for it could as well discontinue its general offices and shops along with its other operating equipment. (2) Secondly, the statutes of Texas, here involved, are predicated upon railroads owning, operating, and maintaining lines of railway in the State. Art. 6260, 6275, Tit. 112, Revised Civil Statutes of Texas, 1925. Hence, as to railroads not operating in Texas, the statutes of the State here involved do not apply in any event. (3) If it be feared that the Texarkana and Ft. Smith Railway Company may be dissolved and its creditors left without recourse, we refer the Court to the Texas statutes (1928 Complete Texas Statutes) which provide in substance that dissolution may be stayed for a period of three years for the purpose of enabling those charged with the duty to settle its affairs (Article 1389), or that a receiver may be appointed by some court of competent jurisdiction for that purpose, in which case the existence of the corporation may be continued by the court so long as in its discretion it is necessary "to suitably settle the affairs of such corporation"

(*idem.*). In case of dissolution, the president and directors or managers of the corporation at that time shall be trustees of the creditors and stockholders with power to settle the affairs of the corporation and such trustees shall be severally responsible to the creditors and stockholders to the extent of the property and effects of the corporation that have come into their hands (Article 1388). (See also, Article 1391 relative to suits after dissolution and in the absence of a receiver appointed by the court.)

In open Court, counsel for the Kansas City Southern Railway Company and the Texarkana and Ft. Smith Railway Company stated that by specific provision the lease required the continuation of corporate existence and organization of the Texarkana company in the State of Texas. Counsel for the State of Texas assented to this statement. Although the appellants did not include the whole lease in the record, and although appellants have made no contention on the basis of possible discontinuance of the corporate organization of the Texarkana company in Texas, the Government nevertheless (since the oral argument) has obtained from the files of the Interstate Commerce Commission a purported copy of the lease and has examined it and finds no specific provision requiring that the Texas organization of the Texarkana company be continued. The Government, therefore, makes no contention on the basis of the lease

except so far as the provisions of the lease have been made a part of the record.

Respectfully submitted.

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OPINION

SUPREME COURT OF THE UNITED STATES.

No. 920.—October Term, 1933.

The State of Texas, Railroad Commission of the State of Texas, et al., Appellants, *vs.* The United States of America, Interstate Commerce Commission, et al.	Appeal from the District Court of the United States for the Western District of Missouri.

[June 4, 1934.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Interstate Commerce Commission, by its report and order of October 4, 1933, authorized the Kansas City Southern Railway Company, a corporation organized under the laws of Missouri, to acquire control by lease of the railroad and properties of the Texarkana & Fort Smith Railway Company, incorporated under the laws of Texas, 193 I. C. C. 521. In this suit, the State of Texas, and officers and municipalities of that State, assailed the order as transcending the authority granted to the Commission by the Congress. The order was sustained by the District Court (6 F. Supp. 63), three judges sitting as required by statute, and from its decree this appeal is taken.

The single point in controversy is with respect to the authority of the Commission to approve the acquisition of control by a lease which permits the lessee to abandon, or to remove from the State, the general offices, shops, etc., of the lessor. The provision of Section 5 of the lease, which has that effect, is set forth in the margin.[1] The provision is attacked as being in violation of the

[1] "But the Southern Company (applicant) does not assume the performance of any corporate obligations on the part of the Texarkana Company independent of its obligations as a common carrier. The Southern Company does not assume any obligation to maintain, during the term of this lease, any general offices, machine shops or roundhouses for or belonging to the Texarkana Company at any particular place or places, regardless of present or previous locations thereof; but shall have the right to change any existing location of general offices, machine shops, roundhouses and terminal facilities,

laws of Texas, which confine to Texas corporations the right to "own or maintain any railways" within the State, which require every railroad company chartered by the State to "keep and maintain permanently its general offices within this State at the place named in its charter", and at that place also to maintain the offices of its principal officers, and which prohibit any railroad company from changing "the location of its general offices, machine shops, or roundhouses, save with the consent and approval of the Railroad Commission" of the State.[2]

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belonging to the Texarkana Company, and to relocate the same, and, from time to time, to change the same, during the full term of this lease, and shall have the right to make all such locations, changes and alterations as in the judgment of the Southern Company will enable it to operate the demised premises in the public interest and with the greatest economy and efficiency; and the Southern Company shall not be obligated or bound to perform any contractual, statutory or other obligations with reference to such matters which may now or hereafter rest upon the Texarkana Company; and any and all such changes may be made, from time to time, by the Southern Company as may be approved by the judgment of its officers or Board of Directors".

[2]These provisions of the Revised Civil Statutes of Texas, 1925, are as follows:

Art. 6260. "No corporation, except one chartered under the laws of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railways within State".

Art. 6275. "Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within this State, at the place named in its charter for the location of its general offices. If no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it contracts or agrees to locate its general office for a valuable consideration".

Art. 6278. "Railroad companies shall keep and maintain at the place within this State where its general offices are located the office of its president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each one of its general offices shall be so kept and maintained by whatever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained; and the persons holding said general offices shall reside at the

The Interstate Commerce Commission was divided in opinion. Upon a prior hearing, the Commission approved the lease upon the condition that the paragraph in controversy should be eliminated. Report and order of December 27, 1932; 189 I. C. C. 253. Following the enactment of the Emergency Railroad Transportation Act, 1933 (Act of June 16, 1933, c. 91), the proceeding was reopened and, after hearing, the Commission modified its order by striking out the above-mentioned condition, thus approving and authorizing the lease with its provision, in Section 5, as to offices and shops.

The findings of fact set forth in the Commission's report are not contested. The lines which constitute what is called the Kansas City Southern Railway system (embracing the portions covered by the proposed lease) extend from Kansas City, Missouri, to Port Arthur, Texas (over 800 miles). The line of the Kansas City Southern Railway Company, the applicant, extends from Kansas City, Missouri, to Mena, Arkansas. The line of the Texarkana & Fort Smith Railway Company is in two segments. The northern segment extends from Mena in a southerly direction, crosses the Arkansas-Texas State line, and runs through Texarkana and thence southeasterly into Arkansas and to the Arkansas-Louisiana State line. The portions of this segment in Arkansas are operated by the applicant under a lease previously authorized by the Interstate Commerce Commission. 105 I. C. C. 523. The portion of the northern segment which lies in the State of Texas, is approximately 31 miles in length. The southern segment of the Texarkana & Fort Smith Railway extends from the Louisiana-Texas State line at the Sabine River to Port Arthur, Texas, and is approximately 50 miles in length. Thus, the total main line mileage of the Texarkana & Fort Smith Railway in Texas is 81 miles; there are about 18 miles of branch lines. The portion of the railroad system lying between the Arkansas-Louisiana State line and the Louisiana-Texas State line, approximately 228 miles, is owned by the Kansas City, Shreveport & Gulf Railroad Company, a subsidiary of the applicant.

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place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained. . . . ."

Art. 6286. "No railroad company shall change the location of its general offices, machine shops or roundhouses, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers and to purchasers of the franchises and properties of railroad companies and to new corporations formed by such purchasers or their assigns. . . ."

The Commission, on the first hearing, found that the consummation of the plan presented by the applicant would result in an annual saving, under normal conditions, of about $81,000. This finding was repeated in the final report. The estimated saving would result from the unification of operations, the discontinuance of general offices of the Texarkana & Fort Smith Railway Company at Texarkana, and the removal to Shreveport and Kansas City of many of the activities at Texarkana which caused duplication of work. Thus, under the proposed plan, the auditor's and treasurer's departments of the Texarkana & Fort Smith Railway Company would be transferred to the applicant's headquarters at Kansas City, with an estimated annual saving of over $57,000. The offices of the general freight agent, general passenger agent, superintendent, and division engineer, and of the master mechanic at Port Arthur, would be removed to Shreveport and consolidated with similar offices of the applicant, at an estimated annual saving of over $21,000. There would also be a decrease in expenses for various services in connection with the building at Texarkana. Shreveport, said the Commission, is considered to be more centrally located from an operating standpoint than Texarkana, and there are at that point the applicant's main terminal for the southern territory, shops for heavy repairs, more industry, greater population, and more railroad connections.

The Commission found that for the four years, 1928-1931, the Texarkana & Fort Smith Railway Company handled an average of 993,622 tons of intrastate traffic and 3,405,944 tons of interstate traffic. Of the average total of 4,399,566 tons, the applicant participated in the handling of 3,192,554 tons. The net income of the Texarkana & Fort Smith Railway Company amounted to $441,922 in 1926, $204,052 in 1927, $437,270 in 1928, $598,172 in 1929, and $95,655 in 1930. In 1931 there appears to have been no net income. The Commission concluded that "in view of the volume of interstate traffic handled by the T. & F. S. and the net income earned by that carrier, it is clear that the expenditure of approximately $81,000 a year, which will be unnecessary under the plan that the applicant proposes to put into effect under the lease, constitutes an undue burden upon interstate commerce."

The Commission further found "that the lease by the Kansas City Southern Railway Company of the railroad and properties of the Texarkana & Fort Smith Railway Company, located in

Texas and elsewhere not now under lease, in accordance with the proposed lease, will be in harmony with and in furtherance of the plan for the consolidation of railroad properties heretofore established by us and will promote the public interest."

The State of Texas raises no question as to the constitutional power of the Congress to confer authority upon the Commission to approve the proposed lease with the stipulations under consideration. The question is simply as to the scope of the authority which has been conferred,—the construction of the applicable statutory provisions. These are found in Section 5 of the Interstate Commerce Act as amended by the Emergency Railroad Transportation Act, 1933 (Title II, secs. 201, 202). Paragraphs (4) (a) and (4) (b) of that section make it lawful, with the approval and authorization of the Commission, for two or more carriers to consolidate or merge their properties; "or for any carrier . . . to purchase, lease, or contract to operate the properties, or any part thereof, of another", or to acquire control of another through purchase of its stock: On application to the Commission for such approval, appropriate notice of public hearing must be given to the Governor of each State in which any part of the properties of the carriers involved is situated, as well as to the carriers themselves. If after hearing, "the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest", the Commission may give its approval and authorization accordingly.[3]

These broadening provisions of the Emergency Railroad Transportation Act, 1933, confirm and carry forward the purpose which

[3]The full text of paragraphs (4) (a) and (4) (b) is as follows:

"(4) (a). It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b), for two or more carriers to consolidate or merge their properties, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through purchase of its stock; or for a corporation which

led to the enactment of Transportation Act, 1920, (Title IV, 41 Stat. 474, *et seq.*). We found that Transportation Act, 1920, introduced into the federal legislation a new railroad policy, seeking to insure an adequate transportation service. To attain that end, new rights, new obligations, new machinery, were created. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 585; *New England Divisions* case, 261 U. S. 184, 189, 190; *Dayton-Goose Creek Railway Co.* v. *United States*, 263 U. S. 456, 478. It is a primary aim of that policy to secure the avoidance of waste. That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public. *Davis* v. *Farmers Co-operative Co.*, 262 U. S. 312, 317; *Texas & Pacific Railway Co.* v. *Gulf, Colorado & Santa Fe Railway Co.*, 270 U. S. 266, 277. The authority given to the Commission to authorize consolidations, purchases, leases, operating contracts, and acquisition of control, was given in aid of that policy. *New York Central Securities Corporation* v. *United States*, 287 U. S. 12, 24, 25. The criterion to be applied by the Commission in the exercise of its authority to approve such transactions—a criterion reaffirmed by the amendments of Emergency Railroad Transportation Act, 1933—is that of the controlling public interest. And that term

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is not a carrier to acquire control of two or more carriers through ownership of their stock; or for a corporation which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock.

"(b). Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control is proposed under subdivision (a), the carrier or carriers or corporation seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants, of the time and place for a public hearing. If after such hearing the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed consolidation, merger, purchase, lease, operating contract, or acquisition of control will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon the terms and conditions and with the modifications so found to be just and reasonable".

as used in the statute is not a mere general reference to public welfare, but, as shown by the context and purpose of the Act, "has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities". *New York Central Securities Corporation* v. *United States, supra.*

It is in the light of this criterion that we must consider the scope of the Commission's authority in relation to provisions which are intended to relieve interstate carriers from burdensome outlays. The fact that burdensome expenditures may be required by state regulations is not a barrier to their removal by dominant federal authority in the protection of interstate commerce. As we said in *Colorado* v. *United States,* 271 U. S. 153, 163: "Prejudice to interstate commerce may be effected in many ways. One way is by excessive expenditures from the common fund in the local interest, thereby lessening the ability of the carrier properly to serve interstate commerce". Even explicit charter provisions must yield to the paramount regulatory power of the Congress. *New York* v. *United States,* 257 U. S. 591, 601. Obligations assumed by the corporation under its charter of providing intrastate service are subordinate to the performance by it of its federal duty, also assumed, "efficiently to render transportation services in interstate commerce". *Colorado* v. *United States, supra,* p. 165. See *Transit Commission* v. *United States,* 284 U. S. 360, 367, 368; *Transit Commission* v. *United States,* 289 U. S. 121, 127; *Florida* v. *United States,* decided April 2, 1934. In the present case, the findings of the Commission, setting forth undisputed facts, leave no doubt that the provision of the lease permitting the abandonment, or removal from the State, of general offices and shops of the lessor has direct relation to economy and efficiency in interstate operations and to the achievement of the purpose which the Congress had in view in its grant of authority.

Counsel for the United States and for the Interstate Commerce Commission emphasize the limitations of the challenged provision. They point out that, in addition to the customary "general offices" of railroads, Section 3, of Article X, of the Constitution of Texas provides that railroad corporations must "maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and where shall be kept for in-

spection by the stockholders of such corporations, books," in which shall be recorded the amount of capital stock subscribed, the names of stockholders, etc., and transfers, the amount of its assets and liabilities, and the names and places of residence of its officers. See, also, Art. 4115, Texas Revised Statutes, 1879; Laws of Texas, 1885, c. 68; Arts. 1358, 6281, Revised Civil Statutes of Texas, 1925. Counsel for the United States and for the Interstate Commerce Commission urge that the "Office-Shops Act", here involved, was enacted independently of the above statutes. Laws of Texas, 1889, c. 106; Art. 6275, Revised Civil Statutes of Texas, 1925. Accordingly, they insist that the order of the Commission and the lease in question apply to the "general offices", shops, etc., and not to the "public office" of the domestic corporation. Counsel for the applicant, the Kansas City Southern Railway Company, submits that the lease by necessary implication requires the Texarkana & Fort Smith Railway Company to maintain its principal office in Texas as the Texas statute requires. See as to service of process, Art. 2029, Revised Civil Statutes of Texas, 1925. In view of the disclaimer on behalf of the United States and the Interstate Commerce Commission, and the interpretation placed upon the provision in the lease, we assume that the question before us merely relates to the abandonment or removal of "general offices", shops, etc., as distinguished from the "public office" required by the Texas statutes, that is, to those transportation facilities the continued maintenance of which, in the circumstances described by the findings of the Commission, would entail unnecessary and burdensome expenditures in operation. As thus construed, we find no ground for concluding that the approval of the provision in the lease was beyond the Commission's authority. There is no interference with the supervision of the State over the lessor in matters essentially of state concern, as distinguished from the operations which in their effect upon interstate commerce are of national concern.

The State invokes Section 11 of Title I of the Emergency Railroad Transportation Act, 1933, which provides that "Nothing in this title shall be construed to relieve any carrier from any contractual obligation which it may have assumed, prior to the enactment of this Act, with regard to the location or maintenance of

offices, shops, or roundhouses at any point". But that section refers explicitly to what is contained in Title I of the Act, with respect to "emergency powers", dealing with the authority of the Federal Coordinator of Transportation and kindred matters, and does not by its terms apply to the provisions of Title II of the Act, in which are found the amendments of Section 5 of the Interstate Commerce Act with respect to the approval and authorization by the Interstate Commerce Commission of consolidations, purchases and leases. And Section 11 of Title I relates to "contractual obligations" assumed by the carrier and does not aptly refer to obligations imposed by statute.[4] The insertion of the provision in Title I, with its restricted application, and the omission of a similar provision from Title II, indicate an intentional distinction.

Title II of the Emergency Railroad Transportation Act, 1933, in amending Section 5 of the Interstate Commerce Act, carries its own provision as to immunity from state requirements which would stand in the way of the execution of the policy of the Congress through the Commission's orders. Subdivision (15) of Section 5 as amended, reads:[5]

"The carriers and any corporation affected by any order under the foregoing provisions of this section shall be, and they are hereby, relieved from the operation of the antitrust laws as designated in section 1 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, and of all other restraints or prohibitions by or imposed under authority of law, State or Federal, insofar as may be necessary to enable them to do anything authorized or required by such order".

The view that, by reference to the context, this immunity should be regarded as limited to those "restraints or prohibitions by or imposed under authority of law" which fall within the general description of "anti-trust" legislation, is too narrow. The rule of "*ejusdem generis*" is applied as an aid in ascertaining the intention of the legislature, not to subvert it when ascertained. *Mid-Northern Oil Company* v. *Montana*, 268 U. S. 45, 49. The scope of the immunity must be measured by the purpose which

[4]See Cong. Rec., 73d Cong., 1st sess., Vol. 77, Pt. 5, p. 4439.

[5]Compare subdivision (8) of Section 5 of the Interstate Commerce Act as amended by Transportation Act, 1920.

Congress had in view and had constitutional power to accomplish. As that purpose involved the promotion of economy and efficiency in interstate transportation by the removal of the burdens of excessive expenditure, the removal of such burdens when imposed by state requirements was an essential part of the plan. The State urges that in the course of the passage of Transportation Act, 1920, a provision for federal incorporation of railroads was struck out. But while railroad corporations were left under state charters, they were still instrumentalities of interstate commerce, and, as such, were subjected to the paramount federal obligation to render the efficient and economical service required in the maintenance of an adequate system of interstate transportation. *Colorado* v. *United States, supra.*

The decision in *International & Great Northern Railway Co.* v. *Anderson County,* 246 U. S. 424, is not opposed. Apart from the fact that in that case the state court had found, upon the verdict of a jury, that the maintenance of the offices and shops at the place at which the predecessor of the plaintiff in error had contracted to maintain them, did not impose a burden upon interstate commerce—a finding which this Court found no reason to disturb (*Id.*, pp. 433, 434)—the case arose prior to the enactment of Transportation Act, 1920, and the question here presented was not involved.

The decree dismissing the bill of complaint is affirmed.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.